

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MAJED SUBH,	:	
	:	
Plaintiff,	:	
	:	
v.	:	ELECTRONICALLY FILED
	:	
WAL-MART STORES, INC., AND	:	
RUTH MCPHERSON,	:	JURY TRIAL DEMANDED
	:	
Defendants.	:	

COMPLAINT

Plaintiff Majed Subh files this Complaint against his former employer, Defendant Wal-Mart Stores, Inc. ("Wal-Mart"), and Ruth McPherson, in both her personal capacity and as Wal-Mart's agent, seeking declaratory relief, punitive and compensatory damages, attorney's fees, and other relief because of Defendants' discrimination against him because of his national origin and race and their retaliation against him because of his complaints about discrimination in the workplace and his filing of Charges of Discrimination with the Equal Employment Opportunity Commission ("EEOC").

Mr. Subh brings this action under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000(e), *et seq.*, as amended by the Civil Rights Act of 1991, 42 U.S.C. § 1981(a) ("Title VII"), and Delaware state law.

I. JURISDICTION AND VENUE

1. This court has original jurisdiction over Mr. Subh's federal law claims pursuant to 28 U.S.C. § 1331.

2. Mr. Subh has fulfilled all conditions precedent to the filing of this lawsuit. Specifically, on April 11, 2008, the EEOC issued a Final Determination and Notice of Right to Sue.

3. This court has supplemental jurisdiction over Mr. Subh's state law claims pursuant to 28 U.S.C. § 1367.

II. THE PARTIES

A. Plaintiff Majed Subh

4. Plaintiff Majed Subh is a citizen of the State of Delaware, residing at 204 Latimer Street in Wilmington, Delaware.

5. Mr. Subh was born in Syria of Palestinian parents. He is an Arab. Mr. Subh is a German citizen.

6. In March 2004, Mr. Subh moved to America to make a better life for himself.

B. Defendant Wal-Mart

7. Defendant Wal-Mart is a national and international retailer of home goods. Wal-Mart operates, 7,357 Wal-Mart stores and Sam's Club locations in 14

markets around the world, employs more than 2 million persons, and sells to more than 200 million customers each year.

8. Wal-Mart operates stores at 75 North East Plaza, North East, Maryland, and at 1251 Centerville Road in Wilmington, Delaware.

9. At all times relevant herein, Wal-Mart acted by and through its agents, servants, and employees, each of whom acted in the course and scope of his or her employment with Wal-Mart.

C. Defendant Ruth McPherson

10. Defendant Ruth McPherson is, upon information and belief, a citizen of the State of Delaware residing at 222 Woodchuck Place in Bear, Delaware.

11. Upon information and belief, at all times relevant herein Defendant McPherson was the Store Co-Manager at Wal-Mart's 1251 Centerville Road store in Wilmington, Delaware.

12. At all times relevant herein, Defendant McPherson acted in her personal capacity and also as Wal-Mart's agent, servant, and employee. As an agent for Wal-Mart, Defendant McPherson acted in the scope of her employment with Wal-Mart.

III. FACTS

13. The foregoing paragraphs are incorporated as if fully set forth herein.

14. On December 20, 2005, Mr. Subh began working for Wal-Mart at its 1251 Centerville Road location in Wilmington, Delaware. Mr. Subh was hired as a Photo Technician. Mr. Subh assisted in preparing the store to open to the public.

15. Mr. Subh performed his job in an exemplary manner. He received high marks on his performance reviews and got along well with his co-workers. He also received compliments from his customers, some of whom would patronize the Wal-Mart store in which he worked solely because of Mr. Subh's excellent customer service.

16. Despite his hard work and dedication to both his job and his new country, Mr. Subh suffered continuous and on-going discrimination at work because of his race and national origin from, among others, Defendant McPherson.

17. Mr. Subh complained to his supervisors and to Wal-Mart's Human Resources Department about the hostile work environment and the discrimination against him. Upon information and belief, Wal-Mart failed to perform any meaningful investigation into Mr. Subh's complaints.

18. Instead, Wal-Mart's supervisors retaliated against Mr. Subh for his complaints about discrimination.

19. Because of the continuing discrimination, hostile work environment, and retaliation, Mr. Subh filed several Charges of Discrimination with the EEOC.

20. Mr. Subh also sought to transfer from the Delaware store to a Wal-Mart store in Maryland. Wal-Mart refused to transfer him unless he agreed to “forget” about the discrimination and retaliation against him.

21. Mr. Subh was compelled to seek legal counsel to assist him. Only after Mr. Subh’s lawyer contacted Wal-Mart did the Company allow him to transfer.

22. Ms. Subh’s respite was short-lived, however. Just over six weeks after his transfer, Wal-Mart terminated Mr. Subh’s employment in retaliation for his complaints of discrimination.

23. Specifically, Ruth McPherson, acting both individually and in her capacity as Wal-Mart’s agent, caused Mr. Subh to be arrested on allegations she knew to be false and without probable cause. Ms. McPherson’s actions were intentional, extreme, and outrageous, and for a purpose other than bringing Mr. Subh to justice.

24. Because of Ms. McPherson’s false allegations, Mr. Subh was arrested while at work, and held in prison for several days pending extradition from Maryland to Delaware.

25. Wal-Mart’s reasons for its termination of Mr. Subh’s employment are pretext for its discrimination and retaliation.

26. Defendant McPherson’s actions were willful, malicious, and in contravention of law.

COUNT I

**Title VII—National Origin Discrimination; Harassment;
Hostile Work Environment; Retaliation
(Against Wal-Mart)**

27. The foregoing paragraphs are incorporated as if fully set forth herein.

28. Based on the foregoing, Wal-Mart has engaged in unlawful employment practices in violation of Title VII because of Mr. Subh's national origin, including, but not limited to, perpetuating a hostile work environment, subjecting Mr. Subh to unlawful national origin discrimination and harassment, subjecting Mr. Subh to more onerous working conditions after he complained about the discrimination and harassment, and terminating Mr. Subh's employment in retaliation for opposing the discrimination, harassment, and hostile work environment.

29. As a direct result of Wal-Mart's unlawful discriminatory and retaliatory practices in violation of Title VII, Mr. Subh has, among other things, sustained lost earnings, severe emotional and psychological distress, loss of self esteem, and loss of future earnings power. Mr. Subh has also lost back pay, front pay, and interest due thereon.

COUNT II

**Title VII—Race Discrimination; Harassment;
Hostile Work Environment; Retaliation
(Against Wal-Mart)**

30. The foregoing paragraphs are incorporated as if fully set forth herein.

31. Based on the foregoing, Wal-Mart has engaged in unlawful practices in violation of Title VII because of Mr. Subh's race including, but not limited to, perpetuating a hostile work environment, subjecting Mr. Subh to unlawful race discrimination and harassment, subjecting Mr. Subh to more onerous working conditions after he complained about the discrimination, harassment, and hostile work environment, and terminating Mr. Subh's employment in retaliation for opposing racial discrimination and harassment.

32. As a direct result of Wal-Mart's unlawful discriminatory practices in violation of Title VII, Mr. Subh has suffered a loss of earnings, severe emotional and psychological distress, loss of self esteem, loss of future earnings power, plus back pay, front pay, and interest due thereon.

COUNT III

**Intentional Infliction of Emotional Distress
(Against Ruth McPherson)**

33. The foregoing paragraphs are incorporated as if fully set forth herein.

34. Based on the foregoing, Defendant McPherson's conduct was intentional or reckless. Her extreme and outrageous conduct was outside the bounds of decency and caused Mr. Subh severe emotional distress.

35. As a direct result of Defendant McPherson's actions, Mr. Subh has endured, among other things, pain and suffering, loss of earning power (past and future), and medical expenses.

COUNT IV

**Defamation
(Against Wal-Mart and Ruth McPherson)**

36. The foregoing paragraphs are incorporated as if fully set forth herein.

37. Based on the foregoing, Defendants released, communicated, and published inaccurate and/or misleading information about Mr. Subh to a third party.

38. The information released, communicated, and published by Defendants imputed a crime to Mr. Subh.

39. Defendants' actions were malicious.

40. As a result of Defendants' actions, Mr. Subh sustained substantial, permanent, and irreparable harm to his reputation, including, among other things, a loss of earnings, the loss of future earning power, and extreme emotional distress and humiliation.

IV. PRAYER FOR RELIEF

41. The foregoing paragraphs are incorporated as if fully set forth herein.

WHEREFORE, Mr. Subh requests that this Court enter a judgment in his favor and against Defendants and order:

a. That Defendants compensate, reimburse, and otherwise make Mr. Subh whole for any pay and benefits he would have received (including but not limited to back pay, front pay, salary, pay increases, bonuses, insurance, benefits, training, promotions, reinstatement, and seniority) had it not been for Defendants' illegal actions.

b. That Wal-Mart reinstate Mr. Subh to the position to which he would have been entitled had he not been subjected to Defendants' unlawful discrimination, including a rate of pay, pay increases, promotions, benefits, bonuses, insurance, training, seniority and other emoluments of employment that he would have received.

c. An award of actual damages as well as damages for the pain, suffering, inconvenience, mental anguish, humiliation, loss of employment, and other non-pecuniary losses caused by Defendants' actions.

d. An award of punitive damages in an amount believed by the Court or the trier of fact to punish appropriately Defendants for their deliberate, malicious, and outrageous conduct and to deter them and others from engaging in such misconduct in the future.

e. An award of attorney's fees and costs.

f. Any such other and further relief as this Court deems appropriate.

V. JURY DEMAND

Mr. Subh demands a trial by jury.

Respectfully submitted,

/s/ Frank Conley

Frank J. Conley, Esquire

Pro hac vice

THE CONLEY FIRM

7715 Cheltenham Avenue, Suite 113

Philadelphia, PA 19118

(215) 836-4789

/s/ Glenn Brown

Glenn Brown, Esquire

Real World Law

916 N. Union St #2

Wilmington, DE 19805

(302) 225-8340

A

EEOC Form 181 (2/88)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: Majed Subh
204 Latimer Street
Apt. 2
Wilmington, DE 19804

From: Baltimore Field Office
10 South Howard Street
3rd Floor
Baltimore, MD 21201



On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1801.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

631-2007-01849

Letetia H. Taylor,
Investigator

(410) 209-2231

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:



The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.



Your allegations did not involve a disability as defined by the Americans With Disabilities Act.



The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.



Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge.



The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.



The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.



Other (briefly state)

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, and/or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit must be filed WITHIN 90 DAYS of your receipt of this notice; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a state claim may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.

On behalf of the Commission

APR 11 2008

Enclosures(s)

Gerald S. Kiel
Director

(Date Mailed)

cc:

Karen L. Green, Esq.
McDonnell & Associates, P.C.
601 S. Henderson Road
Suite 152
King of Prussia, PA 19406

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

MAJED SUBH

(b) County of Residence of First Listed Plaintiff New Castle
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Glenn A. Brown, DMD, Esquire; Real World Law, PC; 916 North Union Street; No. 2; Wilmington, DE 19805 (302) 225-8340

DEFENDANTS

WAL-MART STORES, INC.; RUTH McPHERSON

County of Residence of First Listed Defendant New Castle
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

42 U.S.C. §2000(e) et. seq. 42 U.S.C. §1981(a)

Brief description of cause:

Employment discrimination based upon national origin and retaliation for complaints to the EEOC

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMANDS

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE Sue L. Robinson

DOCKET NUMBER 07-cv-479

DATE

07/07/2008

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE